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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,168	01/28/2002	Jean-Louis Ruelle	BM45378	2038

25308 7590 03/25/2003

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EXAMINER

BASKAR, PADMAVATHI

ART UNIT PAPER NUMBER

1645

DATE MAILED: 03/25/2003

12

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/914,168

**Applicant(s)**

RUELLE, JEAN-LOUIS

**Examiner**

Padmavathi v Baskar

**Art Unit**

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 25-46 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 25-46 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_

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## RESTRICTION

1. Applicant's amendment filed on 8/23/01 has been entered. Applicant requests the office to cancel claims 1-24 of the application as filed in PCT. Claims 1-24 have been canceled and new claims 25-46 have been entered, Claims 25-46 are pending in the application.

2. Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions, which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in response to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 25, 27, 29, 31, 32, 35, 40-41, and 43 drawn to polypeptide, vaccine and a method of use. Further election of invention one SEQ.ID.NO required, see paragraph # 4.

Group II, claims 26, 28, 30, 33, 34, 36 and 37-39, drawn to DNA, vector and host cell. Further election of invention one SEQ.ID.NO required, see paragraph # 4.

Group III, claims 42 and 46 drawn to an antibody and composition. Further election of invention one SEQ.ID.NO required, see paragraph # 4.

Group IV, claim 44 drawn to a method for diagnosing *M.catarrhalis* infection using peptide or antibody. Further election of invention one SEQ.ID.NO required, paragraph # 4.

Group V claim 45 drawn to a method for inducing immune response using polynucleotide. Further election of invention one SEQ.ID.NO required, see paragraph # 4.

3. The inventions listed as Groups I-V do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

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Group I is directed to a polypeptide, method for producing the polypeptide and a method of use as vaccine which is the first product and first method of using the product. The special technical feature is the polypeptide, which is made up of amino acids. Groups II-III are drawn to structurally different products such as nucleic acids and antibodies which do not require each other for their practice and do not share the same or a corresponding technical feature. The Group IV-V inventions are drawn to methods having different goals, method steps and starting materials, which do not require each other for their practice and do not share the same or a corresponding technical feature. Note that PCT Rule 13.2 does not provide for multiple products or methods within a single application. Since the special technical feature of the Group I invention is not present in the Group II, III claims, unity of invention is lacking.

#### **DISTINCT INVENTIONS**

4. This application contains claims directed to more than one invention in each group. These inventions are deemed to lack unity of invention because they are not so linked as to form a single general inventive concept under PCT Rule 13.1 as different sequences are considered as unique, different and distinct inventions.

The inventions are as follows:

SEQ.ID.NOS. 1, 2, 3 or 4

The inventions listed above do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, the inventions lack the same or corresponding special technical features for the following reasons: Sequences listed as SEQ.ID.NOS; 1-4 are different to each other and lack the same or corresponding special technical features because SEQ.ID.NOS 2 or 4 are amino acids and each sequence is different with their specific amino acids and SEQ.ID.NOS 1 or 3 are nucleic acid sequences and each sequence is different with their specific nucleic acids.

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5. Applicant is required, in reply to this action, to elect a group and one sequence and identify the SEQ.ID.NO to which the claims shall be restricted. The reply must also identify the claims readable on the elected invention, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered non-responsive unless accompanied by an election.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Padmavathi v Baskar whose telephone number is (703) 308-8886. The examiner can normally be reached on M-F (6:30A.M-4: 00 P.M.) First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (703) 308-3909. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 308-4242 for regular communications and (703) 308-4242 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

P. Baskar Ph.D.  
3/19/03

  
**LYNETTE R. F. SMITH**  
**SUPERVISORY PATENT EXAMINER**  
**TECHNOLOGY CENTER 1600**